

HOUSE BILL No. 1436

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-37-5-15; IC 34-6-2-148.5; IC 34-26-5-9; IC 35-33-8; IC 35-42-1-3; IC 35-44.1-3-4; IC 36-1-8-18.

Synopsis: Criminal law matters. Allows a county fiscal body to establish a mileage based service of process fee that is reasonably related to the expenses of serving process. Provides that, for the purpose of establishing or modifying the amount of bail, a defendant's dangerousness must be proved by a preponderance of the evidence. (Under current law, dangerousness must be proved by clear and convincing evidence.) Requires a court to immediately revoke bail if a defendant fails to appear at any stage of the proceedings and is charged with certain offenses. Specifies that "victim notification capabilities", with respect to a GPS tracking device, includes the ability of the device to notify a victim if the device comes within a specified distance of a receiver possessed by the victim. Authorizes a court to require the subject of a civil protection order to wear a GPS device with victim notification capabilities if it appears from the petition that domestic violence has occurred. Specifies the conditions under which removing a GPS tracking device constitutes the crime of escape. Increases the penalty for voluntary manslaughter to a Level 1 felony if it is committed with a deadly weapon.

Effective: July 1, 2015.

DeVon

January 14, 2015, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1436

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 33-37-5-15, AS AMENDED BY P.L.156-2007,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 15. (a) The sheriff shall collect a service of
4 process fee of:
5 **(1) thirteen dollars (\$13); or**
6 **(2) an amount authorized by the county fiscal body, if the**
7 **county fiscal body has authorized a mileage based service of**
8 **process fee under IC 36-1-8-18;**
9 from a party requesting service of a writ, an order, a process, a notice,
10 a tax warrant, or any other paper completed by the sheriff. A service of
11 process fee collected under this subsection may be collected only one
12 (1) time per case for the duration of the case.
13 (b) The sheriff shall collect from the person who filed the civil
14 action a service of process fee of sixty dollars (\$60), in addition to any
15 other fee for service of process, if:



(1) a person files a civil action outside Indiana; and

(2) a sheriff in Indiana is requested to perform a service of process associated with the civil action in Indiana.

(c) A sheriff shall transfer fees collected under this section to the county auditor of the county in which the sheriff has jurisdiction.

(d) The county auditor shall deposit fees collected under this section:

(1) in the pension trust established by the county under IC 36-8-10-12; or

(2) if the county has not established a pension trust under IC 36-8-10-12, in the county general fund.

SECTION 2. IC 34-6-2-148.5, AS ADDED BY P.L.116-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 148.5. "Victim notification capabilities" means, with respect to a GPS tracking device, the ability of the device to do the following:

(1) Immediately notify law enforcement or other supervisory personnel if the device enters a forbidden area.

(2) Notify the victim in real time or near real time if the device enters a forbidden area.

(3) Allow a law enforcement officer or other supervisory officer to contact the offender immediately if the device enters a forbidden area.

(4) Activate an alarm to warn others of the device's presence in a forbidden area.

(5) Notify the victim if the device comes within a specified distance of a receiver possessed by the victim.

SECTION 3. IC 34-26-5-9, AS AMENDED BY P.L.1-2010, SECTION 135, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) If it appears from a petition for an order for protection or from a petition to modify an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required, a court may:

(1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte; or

(2) upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

(b) A court may grant the following relief without notice and hearing in an ex parte order for protection or in an ex parte order for protection modification:

(1) Enjoin a respondent from threatening to commit or committing acts of domestic or family violence against a



petitioner and each designated family or household member.

(2) Prohibit a respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner.

(3) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.

(4) Order a respondent to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member.

(5) Order possession and use of the residence, an automobile, and other essential personal effects, regardless of the ownership of the residence, automobile, and essential personal effects. If possession is ordered under this subdivision, the court may direct a law enforcement officer to accompany a petitioner to the residence of the parties to:

(A) ensure that a petitioner is safely restored to possession of the residence, automobile, and other essential personal effects; or

(B) supervise a petitioner's or respondent's removal of personal belongings.

(6) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.

(c) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection (b).

(2) Specify arrangements for parenting time of a minor child by a respondent and:

(A) require supervision by a third party; or

(B) deny parenting time;

if necessary to protect the safety of a petitioner or child.

(3) Order a respondent to:

(A) pay attorney's fees;

(B) pay rent or make payment on a mortgage on a petitioner's residence;

(C) if the respondent is found to have a duty of support, pay for the support of a petitioner and each minor child;

(D) reimburse a petitioner or other person for expenses related to the domestic or family violence, including:

(i) medical expenses;



(ii) counseling;

(iii) shelter; and

(iv) repair or replacement of damaged property;

(E) pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (i); or

(F) pay the costs and fees incurred by a petitioner in bringing the action.

(4) Prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court.

An order issued under subdivision (4) does not apply to a person who is exempt under 18 U.S.C. 925.

(d) The court shall:

(1) cause the order for protection to be delivered to the county sheriff for service;

(2) make reasonable efforts to ensure that the order for protection is understood by a petitioner and a respondent if present;

(3) electronically notify each law enforcement agency:

(A) required to receive notification under IC 5-2-9-6; or

(B) designated by the petitioner;

(4) transmit a copy of the order to the clerk for processing under IC 5-2-9;

(5) indicate in the order if the order and the parties meet the criteria under 18 U.S.C. 922(g)(8); and

(6) require the clerk of court to enter or provide a copy of the order to the Indiana protective order registry established by IC 5-2-9-5.5.

(e) An order for protection issued ex parte or upon notice and a hearing, or a modification of an order for protection issued ex parte or upon notice and a hearing, is effective for two (2) years after the date of issuance unless another date is ordered by the court. The sheriff of each county shall provide expedited service for an order for protection.

(f) A finding that domestic or family violence has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or



agency all firearms, ammunition, and deadly weapons:

- (1) in the control, ownership, or possession of a respondent; or
- (2) in the control or possession of another person on behalf of a respondent;

for the duration of the order for protection unless another date is ordered by the court.

(g) An order for custody, parenting time, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.

(h) The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.

(i) **If it appears from a petition for an order for protection or from a petition to modify an order for protection that domestic or family violence has occurred, or** upon a finding of a violation of an order for protection, the court may:

- (1) require a respondent to wear a GPS tracking device; and
- (2) prohibit the respondent from approaching or entering certain locations where the petitioner may be found.

If the court requires a respondent to wear a GPS tracking device under subdivision (1), the court shall, if available, require the respondent to wear a GPS tracking device with victim notification capabilities.

(j) The court may permit a victim, a petitioner, another person, an organization, or an agency to pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (i).

SECTION 4. IC 35-33-8-4, AS AMENDED BY P.L.171-2011, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.

(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by ~~clear~~ **and convincing a preponderance of the** evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of nonappearance,



including:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and ~~his~~ **the defendant's** ability to give bail;
- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits, and mental condition;
- (5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring ~~him~~ **the defendant** to trial;
- (6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
- (7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;
- (8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance;
- (9) that the defendant is a foreign national who is unlawfully present in the United States under federal immigration law; and
- (10) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring ~~him~~ **the defendant** to trial.

SECTION 5. IC 35-33-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.

(b) When the state presents additional:

- (1) evidence relevant to a high risk of nonappearance, based on the factors set forth in section 4(b) of this chapter; or
- (2) ~~clear and convincing~~ evidence:
 - (A) of the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B); or
 - (B) that the defendant otherwise poses a risk to the physical safety of another person or the community;

the court may increase bail.

(c) When the defendant presents additional evidence of substantial



mitigating factors, based on the factors set forth in section 4(b) of this chapter, which reasonably suggests that the defendant recognizes the court's authority to bring the defendant to trial, the court may reduce bail. However, the court may not reduce bail if the court finds by ~~clear and convincing~~ **a preponderance of the** evidence that the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community.

(d) The court may revoke bail or an order for release on personal recognizance upon clear and convincing proof by the state that:

(1) while admitted to bail the defendant:

(A) or the defendant's agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending criminal proceeding or any other matter;

(B) or the defendant's agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;

(C) violated any condition of the defendant's current release order;

(D) failed to appear before the court as ordered at any critical stage of the proceedings; or

(E) committed a:

(i) felony; or a

(ii) Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring the defendant to trial;

(2) the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community; or

(3) a combination of the factors described in subdivisions (1) and (2) exists.

(e) The court shall revoke bail if the state presents clear and convincing proof that:

(1) the defendant failed to appear before the court as ordered at any critical stage of the proceedings; and

(2) while admitted to bail, the defendant was charged with a:

(A) felony; or

(B) Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring the defendant to trial.

SECTION 6. IC 35-33-8-7, AS AMENDED BY P.L.105-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) If a defendant:



(1) was admitted to bail under section 3.2(a)(2) of this chapter;
 and
 (2) has failed to appear before the court as ordered;
 the court shall, except as provided in subsection (b), **(c)**, or section 8(b)
 of this chapter, declare the bond forfeited not earlier than one hundred
 twenty (120) days after the defendant's failure to appear and issue a
 warrant for the defendant's arrest.

(b) If a defendant:

(1) was admitted to bail under section 3.2(a)(2) of this chapter; and

(2) has failed to appear before the court as ordered and the state has presented clear and convincing evidence that, while admitted to bail, the defendant was charged with a:

(A) felony; or

(B) Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring the defendant to trial;

the court shall, except as provided in subsection (c) or section 8(b) of this chapter, immediately declare the bond forfeited and issue a warrant for the defendant's arrest.

~~(b)~~ **(c)** In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

~~(c)~~ **(d)** Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

~~(d)~~ **(e)** After a bond has been forfeited under subsection (a), **(b)**, or ~~(b)~~, **(c)**, the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.



1 ~~(e)~~ (f) If a bond is forfeited and the court has entered a judgment
 2 under subsection ~~(d)~~; (e), the clerk shall transfer to the state common
 3 school fund:

4 (1) any amount remaining on deposit with the court (less the fees
 5 retained by the clerk); and

6 (2) any amount collected in satisfaction of the judgment.

7 ~~(f)~~ (g) The clerk shall return a deposit, less the administrative fee,
 8 made under section 3.2(a)(2) of this chapter to the defendant, if the
 9 defendant appeared at trial and the other critical stages of the legal
 10 proceedings.

11 SECTION 7. IC 35-42-1-3, AS AMENDED BY P.L.158-2013,
 12 SECTION 413, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) A person who knowingly or
 14 intentionally:

15 (1) kills another human being; or

16 (2) kills a fetus that has attained viability (as defined in
 17 IC 16-18-2-365);

18 while acting under sudden heat commits voluntary manslaughter, a
 19 Level 2 felony. **However, the offense is a Level 1 felony if it is**
 20 **committed by means of a deadly weapon.**

21 (b) The existence of sudden heat is a mitigating factor that reduces
 22 what otherwise would be murder under section 1(1) of this chapter to
 23 voluntary manslaughter.

24 SECTION 8. IC 35-44.1-3-4, AS AMENDED BY P.L.158-2013,
 25 SECTION 511, IS AMENDED TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) A person, except as provided
 27 in subsection (b), who intentionally flees from lawful detention
 28 commits escape, a Level 5 felony. However, the offense is a Level 4
 29 felony if, while committing it, the person draws or uses a deadly
 30 weapon or inflicts bodily injury on another person.

31 (b) A person who knowingly or intentionally:

32 (1) violates a home detention order; or

33 (2) intentionally removes an electronic monitoring device or GPS
 34 tracking device, **including a device required:**

35 **(A) as a condition of probation, parole, home detention,**
 36 **community corrections, pretrial monitoring, bail, forensic**
 37 **diversion, or any other program supervised by a court; or**

38 **(B) under a civil protection order;**

39 commits escape, a Level 6 felony.

40 (c) A person who knowingly or intentionally fails to return to lawful
 41 detention following temporary leave granted for a specified purpose or
 42 limited period commits failure to return to lawful detention, a Level 6



1 felony. However, the offense is a Level 5 felony if, while committing
2 it, the person draws or uses a deadly weapon or inflicts bodily injury on
3 another person.

4 SECTION 9. IC 36-1-8-18 IS ADDED TO THE INDIANA CODE
5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2015]: **Sec. 18. The county fiscal body may authorize the sheriff**
7 **to collect a service of process fee under IC 33-37-5-15 based, in**
8 **whole or in part, on the mileage required to serve the process. A fee**
9 **authorized under this section must be reasonably related to the**
10 **expenses of serving the process.**

